

AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1643

Introduced by Assembly Member Ridley-Thomas

February 21, 2003

An act to amend Sections 2750.5, 3357, 4157, and 5705 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1643, as amended, Ridley-Thomas. Employment.

Under existing law, there is a rebuttable presumption that a worker is an employee, and not an independent contractor for various purposes in employment law including rules governing employees and workers' compensation, unless satisfactory proof, as specified, of independent contractor status exists.

This bill would establish a ~~3rd~~ new category of workers, contract service providers, if specified criteria are satisfied. The bill would make other changes in the Labor Code to provide for this ~~3rd~~ new category.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2750.5 of the Labor Code is amended
2 to read:
3 2750.5. (a) There is a rebuttable presumption affecting the
4 burden of proof that a worker *or business* performing services for
5 which a license is required pursuant to Chapter 9 (commencing

1 with Section 7000) of Division 3 of the Business and Professions
2 Code, or ~~who is~~ performing such services for a person who is
3 required to obtain such a license is an employee rather than an
4 independent contractor or contract service provider.

5 (b) Proof of independent contractor status includes satisfactory
6 proof of these factors:

7 (1) That the individual has the right to control and discretion as
8 to the manner of performance of the contract for services in that
9 the result of the work and not the means by which it is
10 accomplished is the primary factor bargained for.

11 (2) That the individual is customarily engaged in an
12 independently established business.

13 (3) That the individual's independent contractor status is bona
14 fide and not a subterfuge to avoid employee status. A bona fide
15 independent contractor status is further evidenced by the presence
16 of cumulative factors such as substantial investment other than
17 personal services in the business, holding out to be in business for
18 oneself, bargaining for a contract to complete a specific project for
19 compensation by project rather than by time, control over the time
20 and place the work is performed, supplying the tools or
21 instrumentalities used in the work other than tools and
22 instrumentalities normally and customarily provided by
23 employees, hiring employees, performing work that is not
24 ordinarily in the course of the principal's work, performing work
25 that requires a particular skill, holding a license pursuant to the
26 Business and Professions Code, the intent by the parties that the
27 work relationship is of an independent contractor status, or that the
28 relationship is not severable or terminable at will by the principal
29 but gives rise to an action for breach of contract.

30 In addition to the factors contained in paragraphs (1), (2), and
31 (3), any person performing any function or activity for which a
32 license is required pursuant to Chapter 9 (commencing with
33 Section 7000) of Division 3 of the Business and Professions Code
34 shall hold a valid contractors' license as a condition of having
35 independent contractor status.

36 (c) Proof of contract service provider status includes
37 satisfactory proof of these factors:

38 ~~(1) That the contract service provider is a business satisfying~~
39 ~~one of the following:~~

40 ~~(A)–~~

1 (1) The business is a certified California small business, as
2 defined in subparagraph (1) of subdivision (d) of Section 14837 of
3 the Government Code.

4 ~~(B)–~~

5 (2) The business possesses a valid California business or
6 professional license *or pays business taxes in the jurisdiction in*
7 *which it is located.*

8 ~~(2)–~~

9 (3) That the contract service provider has ~~insurance coverage~~
10 ~~self-paid by the contractor, markets to multiple potential~~
11 ~~customers, bills multiple clients, has investments in business~~
12 ~~assets, such as equipment and tools, works under a negotiated~~
13 ~~written contract, or has a recurring monthly retainer agreement for~~
14 ~~general work, and retains control over the time and place the work~~
15 ~~is performed for a customer.~~ *been in operation for two or more*
16 *years.*

17 (d) For purposes of workers' compensation law, this
18 presumption is a supplement to the existing statutory definitions
19 of employee, independent contractor, and contract service
20 provider, and is not intended to lessen the coverage of employees
21 under Division 4 and Division 5.

22 SEC. 2. Section 3357 of the Labor Code is amended to read:
23 3357. Any person rendering service for another, other than as
24 an independent contractor or contract service provider, or unless
25 expressly excluded herein, is presumed to be an employee.

26 SEC. 3. Section 4157 of the Labor Code is amended to read:
27 4157. Where any employer has made an election pursuant to
28 this chapter to include under the compensation provisions of this
29 division an independent contractor or contract service provider
30 engaged in vending, selling, offering for sale, or delivering
31 directly to the public any newspaper, magazine, or periodical, the
32 status of such person as an independent contractor *or contract*
33 *service provider* for all other purposes shall not be affected by such
34 election.

35 SEC. 4. Section 5705 of the Labor Code is amended to read:
36 5705. The burden of proof rests upon the party or lien
37 claimant holding the affirmative of the issue. The following are
38 affirmative defenses, and the burden of proof rests upon the
39 employer to establish them:

- 1 (a) That an injured person claiming to be an employee was an
- 2 independent contractor or contract service provider or otherwise
- 3 excluded from the protection of this division where there is proof
- 4 that the injured person was at the time of his or her injury actually
- 5 performing service for the alleged employer.
- 6 (b) Intoxication of an employee causing his or her injury.
- 7 (c) Willful misconduct of an employee causing his or her
- 8 injury.
- 9 (d) Aggravation of disability by unreasonable conduct of the
- 10 employee.
- 11 (e) Prejudice to the employer by failure of the employee to give
- 12 notice, as required by Sections 5400 and 5401.

